

REMARKS

Claims 1-5, 15, 19-30, 32-41, 52, 56-59, 61-67, 72-78, 81-84, 98-101, and 103 are pending in the application. Claims 2, 6-14, and 16-29 were rejected in the current Office Action. Claims 3, 15, and 30-103 were withdrawn by the Examiner as a result of a restriction requirement. Claims 2, 5, 15, 19, 20, 30, 32, 36, 51, 56-60, 63, 65, 67, and 75 have been amended herein.

In the Claims

Claims 6-14, 16-18, 31, 42-51, 53-55, 60, 68-71, 79, 80, 85-97, and 102 have been canceled, without prejudice.

Claim 2 has been amended by importing the limitations from Claim 14. As a result, Claim 14 has been canceled.

Claim 5, though currently withdrawn, was amended to correct a clerical error. As the Examiner correctly pointed out, this claim depended from Claim 104 when there was no Claim 104. The claim should have depended from Claim 103. This error has been corrected by the amendment herein.

Claims 15, 19, 20, and 28 have been amended to update their dependencies as a result of canceling their base claims.

Claim 30, though withdrawn, has been amended by importing the limitations from Claim 31. As a result, Claim 31 has been canceled. Similarly, Claim 41, though withdrawn, was amended to include the limitations from Claim 51. As a result, Claim 51 has been canceled.

Claims 32, 36, 52, 56-59, 61-63, 65, and 67, though withdrawn, have been amended to update their dependencies as a result of canceling their base claims.

Claim 75 has been amended to remove the multiple dependency.

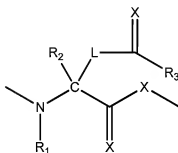
No new matter has been added by the amended claims. It is respectfully requested that examination continue on the claims as amended herewith.

Regarding the Restriction Requirement, Elected Subject Matter, and Withdrawn Claims

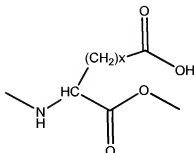
Applicant has amended the Claim 2 to recite that EPIP comprises, *inter alia*, polyglutamic acid. This amendment does not (and should not) render the claims drawn to a non-elected invention. However, the status of Claim 15, which recites polyglutamic acid, as being withdrawn causes some doubt and Applicant requests clarification.

In the current Office Action, the Examiner asserted on page 2 that Claim 15 was withdrawn. The Examiner tried to elaborate, stating that Claim 15 was withdrawn because poly-D-glutamic acid did not read on the elected species. Claim 14, however, which also recited poly-D-glutamic acid and was imported into amended Claim 2, was not likewise withdrawn.

The assertion that poly-glutamic acid is not an elected species seems to be based on the structure of Formula I and II. The elected species is Formula I and II where R_1 and $R_2 = H$, $X = O$, $L = \text{polyalkylene}$, and $R_3 = OH$. Focusing on Formula I for the moment, when one inserts these variables into Formula I one get glutamic acid. The following structures are offered as an illustration.



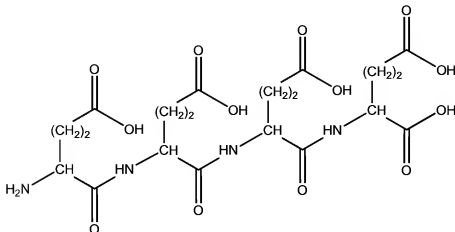
Original Formula I in the Claims



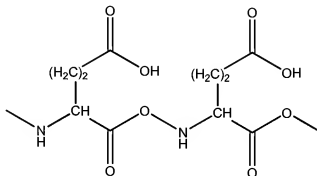
Formula I with the elected variables

Applicant uses $(CH_2)_x$ above to refer to polyalkylene (the elected “L” moiety). When x is 2, *i.e.*, CH_2CH_2 , then the structure to the right is glutamic acid.

The issue seems to be whether a polyglutamic acid would “comprise at least two residues” with the elected formula, as that phrase is used in the claims. Taking a simple polyglutamic acid made from four glutamic acid molecules, one would have the following formula:



This structure shows that a polyglutamic acid does not literally include residues having the elected Formula I. This is because Formula I shows the oxygen adjacent to the carbonyl, when in reality that oxygen is removed as water—resulting in a peptide bond. This meaning should have been understood by the Examiner. Stated differently, the claims recites compounds that comprised residues from the elected glutamic acid. To think otherwise would mean that the elected EPIP would be a carboxyamide not a peptide (see example of carboxyamide below).



That interpretation would not be consistent with the specification. Nor would it be consistent with the name EPIP—erythropoietin production inducing **peptide**. Thus, the election of the variables in the previous Response and the use of (perhaps non ideal) Formula I and II would be understood to include the peptide polyglutamic acid.

Thus to avoid doubt, Applicant has amended the claims to remove these formula and simply recite polyglutamic acid and the like. Polyglutamic acid (as recited in amended Claim 2 and Claim 15) should thus be considered as being with drawn to an elected species.

Regarding the Specification

The Examiner pointed out that the Abstract exceeded the recommended number of words. As such, the Abstract has been shortened by the present amendment.

The Examiner also alleged that the Brief Description of the Drawings section failed to describe the sub-figures in Figures 21, 22, and 27. This clerical error has been corrected with respect to Figures 21 and 22. Specifically, Figure 21a and 21b are both identified and described as well as Figures 22a and 22b. However, for Figure 27, all of the four panels (A though D) are noted in the brief description. Thus, the Examiner's contention that the sub-figures of Figure 27 are not described seems to be in error.

Rejections under 35 U.S.C. § 112

The Examiner rejected Claims 2, 6-12, 14, and 16-29, under 35 U.S.C. § 112, 1st paragraph, for allegedly failing to specifically point out and distinctly claim the subject matter that Applicant regards as the invention. Specifically, the Examiner alleged that the chemical structure drawn in Claim 6, and more particularly the elected species, did not cover poly-D-glutamic acid. In fact, the Examiner stated that the elected species did not even correspond to a peptide backbone. This was explained above and Claim 6 has been canceled and base Claim 2 has been amended to define the EPIP as a poly-glutamic acid. There is ample description in the application about the production and use of poly-glutamic acid (see all of the Examples). Thus, this amendment is believed to overcome this rejection.

Claims 2, 6-14 and 16-29 were also rejected under this section as not complying with the enablement requirement. The claims have been amended to recite the EPIP as comprising poly-D-glutamic acid, poly-L-glutamic acid, poly-D-aspartic acid, poly-L-aspartic acid, or a mixture of both. The use of polyglutamic acid was exemplified throughout the specification.

CONCLUSION

Applicant awaits an action on the merits. Should the Examiner have any questions regarding this response, the Examiner is encouraged to contact the undersigned at the telephone number and address listed below.

A credit card payment submitted *via* EFS Web in the amount of \$60.00, representing the fee for a small entity under 37 C.F.R. § 1.17(a)(1) is enclosed. This amount is believed to be correct; however, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 14-0629

Respectfully submitted,
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APPLICATION NO. 10/552,568

CERTIFICATE OF ELECTRONIC TRANSMISSION UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence, including any items indicated as attached or included, is being transmitted via electronic transmission via EFS-Web on the date indicated below.

Name of Person Mailing
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Christopher L. Curfman

Signature

/Christopher L. Curfman/

Date

March 2, 2010